

**M e m o r a n d u m**

**To** : Honorable Jerome E. Horton, Chairman  
Honorable Michelle Steel, Vice Chair  
Honorable Betty T. Yee, First District  
Senator George Runner (Ret.), Second District  
Honorable John Chiang, State Controller

**Date** : November 8, 2013

**From** : David Gau   
Deputy Director, Property and Special Taxes Department

Jeff McGuire   
Deputy Director, Sales and Use Tax Department

Randy Ferris   
Chief Counsel

**Subject** : Delegation of Non-discretionary Administrative Rate-Setting Adjustments to Executive Director –  
Report on Concerns Raised during the October 29-31, 2013 Meeting

At the October 29th, 2013, Board Meeting, staff recommended that the Board delegate to the Executive Director the authority to determine non-discretionary adjustments associated with seven tax and fee rate-setting duties mandated by law. The memorandum (and its accompanying attachment) for this prior agenda item is attached. One of the rate-setting adjustments included was the timber yield tax rate. In response to a public comment received on this item, the timber yield tax rate was pulled from the list. The Board approved the delegation of the remainder of the items. The Board directed staff to bring the timber yield tax rate item back for further discussion at the November Board meeting. Concerns about the interplay between the delegations at issue and the Board's rulemaking authority were also raised. The following provides: (1) general information on the timber yield tax and why staff believed the timber yield tax rate could be included with the group of non-discretionary tax and fee rate-setting adjustments; and (2) clarification that the Board's action on October 29, 2013, should not be construed as delegating any authority to engage in regulatory activity related to such delegation.

***Timber Yield Tax***

The timber yield tax is a tax on the value of harvested timber. The tax paid is based on values established by the Board for various timber categories. The timber yield tax rate is applied to the value of the net volume of harvested timber calculated at its immediate harvest value.

***Timber Harvest Value***

Every six months, the Board is required to estimate the immediate harvest value of each species or subclassification of timber within the various specified timber areas of the state. On or before June 30, the Board estimates the immediate harvest values of, and adopt schedules for, each species or subclassification of timber harvested between July 1 and December 31. On or before December 31 each year, the Board estimates the immediate harvest values of, and adopt schedules for, each species or subclassification of timber harvested between January 1 and June 30 of the following calendar year. (See Rev. & Tax. Code, § 38204.)

Board staff provides suggested harvest value schedules that are developed from information collected statewide on the sale of logs and standing timber to the Timber Advisory Committee (TAC). (The TAC is a standing committee appointed by the Board.) Currently, the TAC meets twice a year, which enables the Board to consult with the members before meeting in open session to adopt harvest values schedules on or before June 30 and December 31 of each year.

Additionally, the Board, either on its own motion after consultation with the TAC or in response to an application from a timber owner, may modify the immediate harvest values to reflect material changes in timber values that result from fire or other catastrophic cause for any area or part thereof in which damaged timber is located. (Rev. & Tax. Code, § 38204.)

### Timber Yield Tax Rate

The Board is required, after public hearings, to adjust the timber yield tax rate every December based upon the change in the average rate of general property taxation in the 17 rate adjustment counties between the current tax year and the preceding tax year. Proposition 13 has limited the property tax rate to 1 percent plus the rate necessary to fund local voter-approved bonded indebtedness. Based upon the statutorily required calculation, the rate was adjusted to 2.9 percent in 1982 and has remained at that percentage to date. The proposed rate has historically been presented to the Board annually in December on the Public Hearing portion of the calendar (See Rev. & Tax. Code, § 38202.) As discussed at the October 2013 meeting, Revenue and Taxation Code section 38202 requires a public hearing prior to any adjustment of the timber yield tax rate. Had the Board delegated the annual adjustment of the timber yield tax rate, the required public hearing would have been scheduled for the November 2013 Board meeting. Staff would have then reported the adjusted rate (which will remain at 2.9 percent) at the December 2013 meeting. Because such delegation was not received, both the public hearing and the adjustment of the timber yield tax rate (which will require a Board vote) will both occur at the December 2013 meeting, consistent with the Board's historic practices.

### Timber Yield Tax Rate as a Non-Discretionary Administrative Rate-Setting Adjustment

Staff included the timber yield tax rate as one of the non-discretionary administrative rate-setting adjustments because the rate has remained unchanged since 1982, and, due to the method of calculation (see attached), staff does not anticipate that the rate will change.

Given that the delegation of the timber yield tax rate would create a process requiring two separate Board meetings to complete, staff requests that it be given time to reconsider whether such delegation would create an unduly cumbersome process. As discussed above, for this year, both the timber yield tax rate and the timber harvest value setting will be brought to the Board for action in December.

### Interplay of Rate-setting Delegation and Rulemaking

At the October 2013 meeting, the Board delegated to the Executive Director the ability to determine when the California Consumer Price Index (CCPI) requires the adjustment of the exemption thresholds for: (1) the sale in bulk of monetized bullion, nonmonetized gold or silver bullion, and numismatic coins (see Rev. & Tax. Code, § 6355; Cal. Code Regs., tit. 18, § 1599); and (2) the nominal amount for membership fees related to the anticipated retail sale of tangible personal property (see Cal. Code Regs., tit. 18, § 1584). Pursuant to this delegation, if it is determined that an exemption threshold adjustment is required, staff would seek Board approval to initiate rulemaking to amend the appropriate regulation wherein the subject threshold is promulgated. (See Cal. Code Regs., tit. 18, §§ 1584 [*Membership Fees*], 1599 [*Coins and Bullion*].)

Approved:

  
Cynthia Bridges  
Executive Director

Attachments: Chief Counsel Memorandum dated October 11, 2013  
Documentation of the Method of Calculation of the Timber Yield Tax Rate  
DJG:JLM:RMF:lf

cc: Ms. Cynthia Bridges MIC: 73  
Ms. Joann Richmond MIC: 80  
Mr. Ken Thompson MIC: 61  
Mr. Joe Fitz MIC: 67

## Memorandum

To: Honorable Jerome E. Horton, Chairman  
Honorable Michelle Steel, Vice Chair  
Honorable Betty T. Yee, First District  
Senator George Runner, Second District  
Honorable John Chiang, State Controller

Date: October 11, 2013

From: Randy Ferris  
Chief Counsel



Subject: **Delegation of Non-discretionary Administrative Rate-Setting Adjustments to Executive Director – Board Meeting, October 29-31, 2013**  
**Chief Counsel Report – Item M1**

### Recommendation

Staff recommends that the Board delegate to the Executive Director the authority to determine certain mandated, non-discretionary tax and fee rate-setting adjustments.<sup>1</sup>

### Background

Government Code section 15604 permits the Board to appoint its “secretary” (also known as its “Executive Director”) and to prescribe his or her duties. It further provides that the Board may employ expert and clerical assistants as it deems necessary in the performance of its powers and duties. Revenue and Taxation Code section 7 underscores the nature of this delegation in directing that whenever a power is granted to or a duty imposed on the Board, it may be exercised or performed by any deputy or person authorized by the Board unless the law specifically restricts the exercise of that particular power or duty. The Revenue and Taxation Code’s direction as to delegation of powers and duties is further supported by Government Code section 18572, which refers to delegations involving state civil service employees.<sup>2</sup>

The attached “Table of Mandated, Non-discretionary Rate-setting Adjustments” identifies the tax and fee programs, the applicable rate-setting law, and the Department staff which actually develop and/or determine the legally-mandated, non-discretionary rate-setting adjustments for each respective program for which we are recommending a delegation. A determination of these rates is based purely on mechanical computations that are either provided to the Board by other state or

<sup>1</sup> Although it is not a rate-setting duty, staff believes certain exemption threshold adjustments required under the Sales and Use Tax Law deserve similar delegation consideration. For ease of expression, for purposes of staff’s recommendation, rate-setting duties are inclusive of mandated, non-discretionary exemption threshold adjustments.

<sup>2</sup> Government Code section 18572 provides as follows: “[w]henver a power is granted or a duty imposed upon an appointing power, the power may be exercised or the duty performed by a deputy of the appointing power or by a person authorized pursuant to law by him, unless it is expressly otherwise provided.”




local agencies or based on the California Consumer Price Index. Currently, there is no delegation of authority in place authorizing the Executive Director to perform these non-discretionary rate-setting functions. Moreover, we have found no legal authority specifically restricting the exercise of these particular powers or duties.

Therefore, in order to streamline Board processes and more efficiently facilitate administration of the Board's duties with respect to these non-discretionary rate-setting functions, we are seeking a delegation of authority to the Executive Director for the following tax and fee rate-setting duties mandated by law:

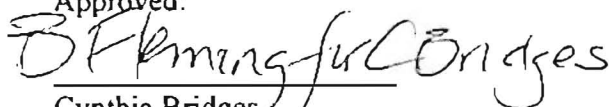
1. Private Railroad Car Tax Rate
2. Occupational Lead Poisoning Prevention Fee
3. Hazardous Substances Programs
  - Activity Fee
  - Disposal Fee
  - Environmental Fee
  - Facility Fee
  - Generator Fee
  - Permit-by-Rule or Conditional Authorization Fee
4. Membership Fees Nominal Amount Exemption
5. Coins and Bullion Bulk Sale Threshold Exemption
6. Emergency Telephone Users Surcharge
7. Timber Yield Tax Rate

Please see the attachment for the details related to each delegation request.

Recommended by:

  
Randy Ferris  
Chief Counsel

Approved:

  
Cynthia Bridges  
Executive Director

BOARD APPROVED

At the \_\_\_\_\_, 2013 Board Meeting  
Joann Richmond, Chief  
Board Proceedings Division

RMF:DC:hp

Attachment: Table of Mandated, Non-discretionary Rate-setting Adjustments

cc: Ms. Cynthia Bridges MIC: 73  
Ms. Amy Kelly MIC: 82  
Ms. Deborah Cooke MIC: 82

**Table of Mandated, Non-discretionary Rate-setting Adjustments**

<b>Tax/Fee Program</b>	<b>Who Owns the Program?</b>	<b>Rate-setting Law Section</b>	<b>Board Meeting When Rate Setting Usually Appears for Approval</b>	<b>When Does Rate Become Effective?</b>	<b>Who Develops/Determines the Rate and Prepares the documents for the Public Agenda Notice (PAN)?</b>
Private Railroad Car Tax Rate	Property Taxes	Article XIII, § 19 of Cal. Constitution  R&TC § 11401 & § 11403	July	July 1-June 30	Research and Statistics with information from county assessors
Occupational Lead Poisoning Prevention Fee	Special Taxes	Health & Safety Code (H&SC) § 105190	September/October	Jan. 1 –Dec. 31	Special Taxes based on changes to the California Consumer Price Index (CCPI) published by the Cal. Dept. of Industrial Relations
Hazardous Substances Programs <ul style="list-style-type: none"> <li>• Activity Fee</li> <li>• Disposal Fee</li> <li>• Environmental Fee</li> <li>• Facility Fee</li> <li>• Generator Fee</li> <li>• Permit-by-Rule or Conditional Authorization Fee</li> </ul>	Special Taxes	All H&SC Sections <ul style="list-style-type: none"> <li>• § 25205.7</li> <li>• § 25174.2</li> <li>• § 25205.6</li> <li>• § 25205.4</li> <li>• § 25205.5</li> <li>• § 25205.14</li> </ul>	September/October	Jan. 1-Dec. 31	Special Taxes based on changes to the CCPI published by the Cal. Dept. of Industrial Relations

**Table of Mandated, Non-discretionary Rate-setting Adjustments**

<b>Tax/Fee Program</b>	<b>Who Owns the Program?</b>	<b>Rate-setting Law Section</b>	<b>Board Meeting When Rate Setting Usually Appears for Approval</b>	<b>When Does Rate Become Effective?</b>	<b>Who Develops/Determines the Rate and Prepares the documents for the Public Agenda Notice (PAN)?</b>
Membership Fees Nominal Amount Exemption	Sales and Use Tax	Regulation 1584	September, Every Five Years	January 1	Tax Policy Division based upon CCPI
Coins and Bullion Bulk Sale Threshold Exemption	Sales and Use Tax	R&TC § 6355	September	January 1	Tax Policy Division based upon CCPI
Emergency Telephone Users Surcharge	Special Taxes	R&TC § 41030 R&TC § 41031 R&TC § 41032	October/November	Jan 1-Dec. 31	Office of Emergency Services determines rate by October 1. Must be published in Board meeting minutes no later than Nov. 15  Special Taxes prepares PAN material.
Timber Yield Tax Rate	Property Taxes	R&TC § 38202	December	January 1	Research and Statistics.  Property Taxes prepares PAN material.

## Timber Yield Tax Attachment

- The statutory rate varies with the weighted average tax rate for the 17 rate adjustment counties
- The passage of Prop 13 reduced the rate of tax in those counties by 50% which resulted in a Yield Tax rate for 1979 of 3.0%.
- As Prop 13 set the ad valorem rate at 1% plus the amount required to service debt, the changes in the rates are dependent on the increase or decrease of debt serviced by ad valorem taxes in each county.
- In 1982, the rate was reduced to 2.9% reflecting a drop in debt service as bonds in effect when Prop 13 passed were retired and the Timber Yield Tax rate has remained at that level since then.
- The 17 rate adjustment counties have relatively low tax rates compared with the statewide average rate of 1.11% due to lower levels of debt service (See Table 1: Rate Adjustment Counties – Tax Rate Five Year Detail)
- The weighted average rate of tax in the 17 rate adjustment counties began increasing starting with the 2008-2009 fiscal year as those counties' rates increased to accommodate increased debt service.
- The increase in the average tax rate for those counties was insufficient to cause the Timber Yield Tax rate to be changed from 2.9%. (See Table 2:- 12 Year Analysis of Rate Adjustment County Tax Volatility)

**TABLE 1: Rate Adjustment Counties – Tax Rate Five Year Detail**

Fiscal year	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	5 Year Change in Rate	Average Change per year
Alpine	1.000%	1.000%	1.000%	1.000%	1.000%	1.000%	0.000%	0.000%
Del Norte	1.015%	1.012%	1.042%	1.035%	1.039%	1.038%	0.023%	0.005%
El Dorado	1.029%	1.041%	1.052%	1.053%	1.061%	1.062%	0.033%	0.007%
Glenn	1.027%	1.044%	1.047%	1.048%	1.048%	1.048%	0.021%	0.004%
Humboldt	1.044%	1.043%	1.052%	1.055%	1.066%	1.066%	0.022%	0.004%
Lassen	1.010%	1.010%	1.022%	1.019%	1.019%	1.020%	0.010%	0.002%
Mendocino	1.082%	1.090%	1.093%	1.104%	1.106%	1.107%	0.025%	0.005%
Modoc	1.000%	1.000%	1.000%	1.000%	1.000%	1.000%	0.000%	0.000%
Nevada	1.033%	1.039%	1.037%	1.045%	1.099%	1.099%	0.066%	0.013%
Placer	1.052%	1.056%	1.062%	1.077%	1.079%	1.079%	0.027%	0.005%
Plumas	1.014%	1.025%	1.039%	1.028%	1.032%	1.033%	0.019%	0.004%
Shasta	1.056%	1.058%	1.071%	1.076%	1.090%	1.092%	0.036%	0.007%
Sierra	1.034%	1.033%	1.034%	1.035%	1.032%	1.032%	(0.002%)	0.000%
Siskiyou	1.025%	1.027%	1.035%	1.047%	1.047%	1.047%	0.022%	0.004%
Tehama	1.017%	1.019%	1.020%	1.016%	1.026%	1.026%	0.009%	0.002%
Trinity	1.014%	1.012%	1.014%	1.014%	1.020%	1.020%	0.006%	0.001%
Yuba	1.001%	1.046%	1.096%	1.094%	1.097%	1.097%	0.096%	0.019%
Weighted Average	<u>1.041%</u>	<u>1.048%</u>	<u>1.056%</u>	<u>1.064%</u>	<u>1.072%</u>	<u>1.073%</u>		

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## Timber Yield Tax Attachment

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**TABLE 2: 12 Year Analysis of Rate Adjustment County Tax Rate Volatility**

Fiscal year	Weighted Average Tax Rate	Change from Prior Year	Threshold to change rate from 2.9%
2001-02	1.040%	0.000%	0.0172%
2002-03	1.040%	0.000%	0.0172%
2003-04	1.042%	0.002%	0.0172%
2004-05	1.043%	0.001%	0.0172%
2005-06	1.043%	0.000%	0.0172%
2006-07	1.042%	(0.001%)	0.0172%
2007-08	1.041%	(0.001%)	0.0172%
2008-09	1.048%	0.007%	0.0172%
2009-10	1.056%	0.008%	0.0172%
2010-11	1.064%	0.008%	0.0172%
2011-12	1.072%	0.008%	0.0172%
2012-13	1.073%	0.001%	0.0172%